IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2001 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAZDOOR KALYAN SANGH

Versus

GOVERNMENT OF INDIA

Appearance:

1. Special Civil Application No. 2001 of 1994

MR MUKESH H RATHOD for Petitioner No. 1

MR PJ DAVAWALA for Respondent No. 1, 2

MR DC RAVAL for MR MR ANAND for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/04/2004

ORAL JUDGEMENT

The petitioner - Union has filed this petition on behalf of 16 employees who have been denied Industrial

Reference by the Conciliation Officer vide order dated 27th August, 1993 on the ground of delay. It has observed that :-

"The dispute has been raised belatedly after a lapse of more than ten years without advancing adequate reasons."

It is this decision which is now under challenge.

1.1 It appears from the record of this petition that a demand was made for regularising the service of the concerned employees in Class-IV category of the servant of the State Bank of Saurashtra i.e. respondent no.3. They have been working in the said canteen prior 1981 and they had rendered service ranging between 15 to 20 years. They also demanded all the consequential benefits with retrospective effect. It further appears that inspite of this dispute, earlier Civil Suit was filed being Regular Civil Suit No. 594 of 1979. The say of the petitioner is that in the said suit, ultimately, assurance was given by the Bank that the demands of the concerned employees would be adequately satisfied. In view thereof, the said suit was withdrawn on 26th June, 1981. It is the say of the petitioner that inspite of the assurance given, demands were not satisfied and the matter was referred to the Conciliation Officer for conciliation. However, conciliation did not materialize and failure report was submitted. In view of the same, the concerned employees requested for referring the dispute for adjudication to the appropriate forum. The said request was not acceded to by the concerned Officer on the ground that it was at a belated stage.

1.2. In this petition, averments have been made by the petitioner that the competent authority has no jurisdiction to pass the order refusing to make Reference on the ground of delay. It is the submission of the petitioner that the competent authority has only to find out whether any dispute existed, which would be termed as industrial dispute and if he found that there existed a dispute, it was incumbent upon him to refer the matter to the Industrial Tribunal for adjudication.

2. On this submission, it is prayed that the impugned order dated 27th August, 1993, be quashed and to direct respondent no. 1 to make Reference of the demands raised by the petitioner - Union on 28th September, 1991 for adjudication to the Industrial Tribunal.

2.1. Mr. Mukesh Rathod learned advocate for the

petitioner has submitted that the Assistant Commissioner has acted beyond his jurisdiction by declining to make Reference regarding the dispute raised by the petitioner Union. He has further submitted that it is well settled law by now that on the ground of delay, Reference cannot be denied to the workman. In respect of this contention, he has placed reliance on several decisions, which will be referred to in the due course of the judgment.

3. Having gone through the record of this petition, it is clear that the petitioner - Union had raised certain demands regarding regularization of 16 employees who were working in the canteen of the Bank. They were working for the last 15 to 20 years. Their grievance was that despite having worked for so long, their service was not being regularized in Class-IV. It also appears that they had requested for grant of consequential monetary benefits such as bonus, H.R.A. etc., with retrospective effect. It also appears that initially a suit was filed which was withdrawn at the assurance given by the Bank to fulfill the demands to the concerned employees. However, the said assurance was not acted upon and, therefore, the petitioner - Union has been compelled to raise industrial dispute. In these circumstances, it is very clear the petitioner - Union was already pursuing legal remedy in respect of demands raised by the concerned employees. However, when the assurance was given, the suit was withdrawn. In such circumstances, when the legal remedy was being prosecuted for the same subject matter, it cannot be termed as delay and the Conciliation Officer could not have refused to make Reference on the ground of delayed demands being raised.

3.1. The Apex Court in the case of Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd., & Anr. reported in A.I.R. 1999 S.C. p.1351 has held that provisions of Article 137 of the Schedule to the Limitation Act are not aplicable to the Industrial Disputes Act and relief cannot be denied to workman merely on the ground of delay. Similar view has been taken by the Apex Court in the case of Sapan Kumar Pandit v. U.P. State Electricity Board & Ors., reported in 2001 III C.LR. 16.

In view of the aforesaid, and in view of the decisions which have been cited by Mr. Mukesh Rathod, this petition deserves to be allowed. The impugned order dated 27th August, 1993 is quashed and set aside. The competent officer is directed to reconsider the demand and make the Reference. The petition is, therefore, allowed. Rule is made absolute with no order as to

costs.

[AKSHAY H. MEHTA, J.]
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